

1 ROB BONTA
Attorney General of California
2 CHERYL FEINER
MICHAEL NEWMAN
3 Senior Assistant Attorneys General
CHRISTINE CHUANG
4 Supervising Deputy Attorney General
JULIA HARUMI MASS
5 LEE I. SHERMAN
SHUBHRA SHIVPURI
6 JOSHUA SONDHEIMER
JASLEEN K. SINGH (SBN 316596)
7 Deputy Attorneys General
300 S. Spring Street
8 Los Angeles, CA 90013
Telephone: (213) 269-6622
9 Fax: (213) 897-7605
E-mail: Jasleen.Singh@doj.ca.gov
10 *Attorneys for Plaintiffs Eloy Ortiz Oakley and Board
of Governors of the California Community Colleges*

11 (Additional Counsel Listed on Signature Page)
12

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION
16

17 **ELOY ORTIZ OAKLEY, in his official**
18 **capacity as Chancellor of California**
19 **Community Colleges, et al.,**
Plaintiffs,

20 v.

21 **MIGUEL CARDONA, in his official**
22 **capacity as the United States Secretary of**
23 **Education; U.S. DEPARTMENT OF**
24 **EDUCATION,**

Defendants.
25
26
27
28

Case No. 20-cv-03215-YGR

**ORDER OF DISMISSAL WITHOUT
PREJUDICE OF FIRST AMENDED
COMPLAINT PURSUANT TO
STIPULATION**

Courtroom: 1
Judge: Hon. Yvonne Gonzalez Rogers
Trial Date: None Set
Action Filed: May 11, 2020

1 IT IS HEREBY STIPULATED, by and between the parties that the above-captioned
2 action is dismissed without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).
3 The reasons for this Stipulation are as follows:

4 1. Plaintiffs Eloy Ortiz Oakley, the Board of Governors of the California Community
5 Colleges, Foothill-De Anza Community College District, Los Angeles Community College
6 District, Los Rios Community College District, State Center Community College District, and
7 San Diego Community College District (Plaintiffs) filed a complaint in this action on May 11,
8 2020 (ECF No. 1);

9 2. Plaintiffs' complaint challenged Defendants' imposition of eligibility restrictions
10 on COVID-19 emergency assistance grants for students under the Higher Education Emergency
11 Relief Program (HEERF) enacted under the Coronavirus Aid, Relief and Economic Security
12 (CARES) Act of March 27, 2020;

13 3. Defendants' eligibility restrictions prohibited institutions of higher education from
14 disbursing HEERF grants to students unless such students were eligible for federal financial aid
15 under title IV of the Higher Education Act of 1965 (Title IV);

16 4. On May 13, 2020, Plaintiffs filed a motion for a preliminary injunction (ECF No.
17 16), seeking relief from Defendants' Title IV restrictions;

18 5. On June 17, 2020, Defendants published an Interim Final Rule (IFR) that
19 incorporated Defendants' Title IV restrictions on student eligibility for HEERF grants and stated
20 that restrictions on the disbursement of "federal financial aid" to certain noncitizens under
21 8 U.S.C. § 1611 (Section 1611) applied to HEERF grants;

22 6. On June 17, 2020, this Court issued a preliminary injunction (ECF No. 44)
23 prohibiting Defendants from: (1) imposing or enforcing Title IV and Section 1611 restrictions on
24 disbursement of HEERF grants by California community colleges; (2) requiring that any
25 California community college accept those eligibility restrictions in order to access HEERF
26 funds; and (3) penalizing any California community college, including by withholding,
27 terminating, or taking any action to recover HEERF funds or any other federal funds, for failing
28 to comply with the eligibility restrictions;

1 7. On August 13, 2020, Defendants filed a Notice of Appeal from the preliminary
2 injunction order (ECF No. 50);

3 8. On November 6, 2020, Plaintiffs filed a First Amended Complaint (ECF No. 55),
4 challenging Defendants' IFR as *ultra vires* and as violating separation of powers' principles, the
5 Spending Clause, and the Administrative Procedure Act;

6 9. On May 14, 2021, Defendants published in the Federal Register a Final Rule, 86
7 Fed. Reg. 26608, in which they rescinded the IFR's Title IV and Section 1611 eligibility
8 restrictions on HEERF grants to students and amended applicable regulations to provide that
9 eligible institutions of higher learning could disburse HEERF grants to any enrolled student;

10 10. On May 20, 2021, Defendants moved to dismiss their appeal in the U.S. Court of
11 Appeals for the Ninth Circuit and that court dismissed the appeal.

12 THEREFORE, the PARTIES, through their undersigned attorneys, HEREBY
13 STIPULATE AND AGREE that:

- 14 i. The above-captioned action is dismissed without prejudice pursuant to Federal
15 Rule of Civil Procedure 41(a)(1)(A)(ii); and
16 ii. All parties will bear their own fees and costs.
- 17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: June 10, 2021

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 CHERYL FEINER
5 MICHAEL NEWMAN
6 Senior Assistant Attorneys General
7 CHRISTINE CHUANG
8 Supervising Deputy Attorney General
9 JULIA HARUMI MASS
10 LEE I. SHERMAN
11 SHUBHRA SHIVPURI
12 JOSHUA SONDHEIMER
13 Deputy Attorneys General

14 /s/ Jasleen K. Singh
15 JASLEEN K. SINGH
16 Deputy Attorney General
17 *Attorneys for Plaintiffs Eloy Ortiz Oakley and*
18 *Board of Governors of the California*
19 *Community Colleges*

20 /s/ John Shupe
21 JOHN SHUPE
22 Lynch and Shupe, LLP
23 316 Mid Valley Center # 180
24 Carmel, CA 93923-8516
25 Telephone: (650) 579-5950
26 Fax: (650) 579-0300
27 E-mail: jshupe@lynchshupelaw.com
28 *Attorney for Plaintiff Foothill-De Anza*
Community College District

/s/ Jeffrey M. Prieto
JEFFREY M. PRIETO
General Counsel
Los Angeles Community College District
770 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: (213) 891-2188
Fax: (213) 891-2138
E-mail: prietojm@laccd.edu
Attorney for Plaintiff Los Angeles Community
College District

BRIAN M. BOYNTON
Acting Assistant Attorney General
MARCIA BERMAN
Assistant Director, Federal Programs Branch

/s/ Kathryn L. Wyer
KATHRYN L. WYER (Utah Bar No. 9846)
M. ANDREW ZEE (California Bar No.
272510)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W., Room 12014
Washington, DC 20005
Tel: (202) 616-8475
Email: kathryn.wyer@usdoj.gov
Attorneys for Defendants

1 /s/ Jacob Knapp
JACOB KNAPP
2 General Counsel
Los Rios Community College District
3 1919 Spanos Court
4 Sacramento, CA 95825
Telephone: (916) 568-3042
5 E-mail: knappj@losrios.edu
Attorney for Plaintiff Los Rios Community College District

6 /s/ Matthew T. Besmer
MATTHEW T. BESMER
7 General Counsel
8 State Center Community College District
1171 Fulton Street
9 Fresno, CA 93721
Telephone: (559) 243-7121
10 E-mail: matthew.besmer@scccd.edu
Attorney for Plaintiff State Center
11 *Community College District*

12 /s/ Ljubisa Kostic
LJUBISA KOSTIC
13 Director, Legal Services & EEO
San Diego Community College District
14 3375 Camino del Rio South, Room 385
San Diego, CA 92108
15 Telephone: (619) 388-6877
16 Fax: (619) 388-6898
E-mail: lkostic@sdccd.edu
17 *Attorney for Plaintiff San Diego Community*
18 *College District*

19
20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21 Date: June 15, 2021

22 
YVONNE GONZALEZ ROGERS
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28